IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 298 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

1.M/S.BHARMAL BROTHERS & CO., & 4 OTHERS

Appearance:

MR BY MANKAD APP for Petitioner

MR YOGESH S LAKHANI for Respondent No. 1, 2, 3, 4, 5

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 22/11/2000

ORAL JUDGEMENT

The State has, by preferring this Criminal Revision Application under Sec. 397 of the Criminal Procedure Code, 1973 (for short " the Cr.P.C."), challenged correctness, legality and propriety of judgment Ex.32 dated 12th April, 1993 rendered by the

learned Additional Sessions Judge, Junagadh, (who will be referred to hereinafter as the learned Judge of the Special Court) who passed that judgment in his capacity as a Judge of the Special Court constituted under the Essential Commodities Act, 1955 (in short " the Act"). By that judgment, the accused -respondents herein have been ordered to be discharged from the case for an offence punishable under Sec. 7 of the Act, mainly on the ground that complaint lodged by the Agricultural Inspector, Talala (Gir) is time barred.

2. The facts leading to this present Criminal Revision Application in a nut shell are as follows:-

That the complainant Shri B.H.Sagaraka, who is an Agricultural Inspector working at Talala (Gir), Dist.Junagadh, lodged his complaint against the accused for contravention of the provisions of sec.13 of the Fertilizers Control Order, 1957 which is punishable under Sec.7 of the Act. As per Para 3 of the judgment challenged in this Criminal Revision Application, on receipt of above complaint, the learned Judge of the Special Court had taken cognizance of the offence on 8/2/1988 and issued bailable warrant against the accused. The accused appeared before the Court and at the stage of recording plea of accused, a question of limitation was raised by the accused. The learned Judge of the Special Court, by taking into consideration, the proviso to Clause (f) of Sec.12-AA of the Act came to a conclusion that case before him was a summary triable case and in that case, as the Judge of the Special Court, can inflict sentence of imprisonment for term not exceeding two years and by thus taking shelter of this proviso, he has come to a conclusion that when offence is punishable with imprisonment of two years only, the complaint lodged by the Agricultural Inspector is exfacie time barred, and therefore, by placing reliance on Sec.468(2)(c), he found that when the offence is punishable for an imprisonment for a term exceeding one year, but not exceeding three years, then period of limitation shall be of three years. As per case of the complainant, he filed the complaint after four years, and therefore, the learned Judge of the Special Court discharged the accused, and that order of discharge has been challenged in this Criminal Revision Application.

3. From the impugned order, it appears that for computation of period of limitation, the learned Judge of the Special Court constituted under the Essential Commodities Act, 1955 has kept in mind the provisions of Sec.12-AA of the Act. That Section is an enabling

section for the learned Special Judge to try the case summarily, and if case is tried summarily, then he can inflict sentence for not exceeding two years. Sec.468 of Cr.P.C. specifically prescribes limitation period for particular offences according to term of imprisonment. In this case, the offence is for contravention of Sec.3 of the Essential Commodities Act, 1955, which is punishable under Sec.7 of the Act. Looking to the provisions of Fertilizers Control Order, 1957, the contravention is of Sec.3 of the Act which is punishable under Sec.7 for which maximum sentence is prescribed for imprisonment of seven years, and therefore, the provisions of Sec.12AA of the Act will not be applicable to this present case.

4. Shri B.Y.Mankad, learned APP has placed reliance on the unreportede decision of STATE OF GUJARAT VS. SHRI RAJ FERTILIZERS, rendered by this Court (Coram: Miss R.M.Doshit, J.) in Criminal Revision Application No.342 of 1993 decided on 14th September, 2000. Looking to the facts and circumstances of this present case, the facts are exactly similar to that of cited case. In that case, this Court has observed in judgment that what is relevant for the purpose of Sec.468 of Cr.P.C. is the penal provision and not the power of imposition of penalty of the Special Court. This Court has further observed that Sec. 468 Cr.P.C. provides for period of limitation for offences which are punishable with fine only and which are punishable with imprisonment for a term exceeding one year, but not exceeding three years. The words 'offences punishable ' should necessarily be referable to the penal provisions, and therefore, taking into consideration the sentence prescribed for the offence punishable under Sec.7 of the Essential Commodities Act, Sec.12AA of the Act cannot be made applicable to the facts of the present case, because offence under Sec.7 of the Act is punishable for imprisonment for a period upto seven years. In view of this, the learned Special Judge has passed an order without keeping in mind the provisions of Sec. 468 of Cr.P.C. read with Sec.7 of the Act.

5. In view of what is stated hereinabove, the impugned order Ex. 32 is exfacie illegal and incorrect. This Criminal Revision Application, therefore, deserves to be allowed, and accordingly it is allowed. The order Ex.32 passed by the learned Special Judge and Additional Sessions Judge, Junagadh, in his capacity as Judge of the Special Court under the Act, on 12/4/1993 in Special Case No.3/1988 is quashed and set aside. The learned Judge of the Special Court is directed to proceed further from the stage at which the impugned order was passed at Ex.32.

Rule is made absolute to the aforesaid extent.

Date: 22/11/2000. (H.H.MEHTA,J.)
ccshah